

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

**COLD STONE CREAMERY LEASING
COMPANY, INC., an Arizona Corporation,**

Plaintiff,

v.

**FW OR-GREENWAY TOWN CENTER,
LLC, a Delaware Limited Liability
Company,**

Defendant.

Case No. 3:18-cv-01806-YY

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Youlee Yim You issued Findings and Recommendation in this case on July 8, 2019. ECF 24. Magistrate Judge You recommended that Plaintiff's motion for summary judgment (ECF 16) be denied and Defendant's motion for summary judgment (ECF 18) be granted.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate judge’s recommendations for “clear error on the face of the record.”

Plaintiff timely filed an objection. ECF 26. The Court has reviewed *de novo* those portions of Magistrate Judge You’s Findings and Recommendation to which Plaintiff has objected, as well as Defendant’s response (ECF 27). The Court agrees with Magistrate Judge You’s reasoning and ADOPTS those portions of the Findings and Recommendation.

For those portions of Magistrate Judge You’s Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court **ADOPTS** Magistrate Judge You's Findings and Recommendation, ECF 24. Plaintiff's motion for summary judgment (ECF 16) is DENIED and Defendant's motion for summary judgment (ECF 18) is GRANTED.

IT IS SO ORDERED.

DATED this 12th day of August, 2019.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge